

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILLIE J. ARMSTRONG HAMILTON,)
W.C. JONES, CHERYL JENKINS,)
BRIAN DACUS, ELROY WILLIAMS,)
DONALD GRIEVES, JOHN LOPEZ,)
JACK BROWN, JOE GRIEGER,)
CHERYL PRINCE, and RAYMOND)
BASS,)

Plaintiffs,)

v.)

R. JAMES NICHOLSON,)
DEPARTMENT OF VETERANS)
AFFAIRS, PAUL PULLUM, GENE)
FERRELL, DENNIS SNYDER, and)
JOHN PHILLIPS,)

Defendants.)

8:03CV443

MEMORANDUM AND ORDER

This matter is before the court on the defendants' renewed motion to dismiss, Filing No. 65. Defendants contend that plaintiffs have failed to show that service has been effectuated on each of the defendants. The court ordered such service in Filing Nos. 53, 57 and 59. On August 11, 2005, the defendants filed a motion to dismiss for failure to obtain appropriate service. Filing Nos. 43 and 44. On December 19, 2005, the court denied the motion to dismiss, but concluded the motion could be reasserted if plaintiffs failed to file appropriate proofs of service. Filing No. 53. Plaintiff received additional extensions to file the proofs of service. Filing Nos. 57 and 59. The court indicated that the proofs must be filed by January 23, 2006, and no additional extensions would be granted. Filing No. 59. The day before this deadline, plaintiffs asked for reissue of summons. Filing No. 60. The court denied this motion. Filing No. 63. In that order, this

court stated: "Plaintiff filed this case in October 2003, and still has not managed to effectuate service on all of the parties, in spite of the fact that he has been represented by counsel since February 2005." *Id.*

Defendants move again for dismissal of the fourth amended complaint for failure to obtain proper service. Plaintiffs contend that they have timely effectuated service on the Department of Veterans Affairs, through the Secretary, R. James Nicholson and on Paul Pullum. They further contend that they effectuated service on the United States Attorney on January 27, 2006. The plaintiffs agree they have not effectuated service on Gene Ferrell, Dennis Snyder and John Phillips.

The court has the authority to dismiss this case for failure to comply with its numerous orders to effectuate summons in this case. Fed. R. Civ. P. 41(b). *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984) (dismissal by court for lack of diligence by plaintiff and failure to comply with orders of court affirmed). The court finds that defendants Ferrell, Snyder and Phillips will be dismissed for improper service under Fed. R. Civ. P. 4(i) and for failure to comply with the court's numerous orders, in violation of Fed. R. Civ. P. 41(b). It appears that the plaintiffs attempted to obtain a summons and issue service on the United States Attorney prior to January 23, 2006. Although the court is unhappy with the speed and method by which plaintiff effectuated service in this case on the United States Attorney, the court will allow the case to proceed against the Department of Veteran Affairs, R. James Nicholson, and Paul Pullum. However, the court will not tolerate any additional delays on the part of the plaintiffs in this case. This case is two and one half years old and should be well into discovery and trial. Further delays will not be permitted.

THEREFORE, IT IS ORDERED THAT defendants' renewed motion to dismiss, Filing No. 65, is granted in part and denied in part. Defendants Gene Ferrell, Dennis Snyder, and John Phillips are dismissed with prejudice from this case. The magistrate shall immediately progress this case.

DATED this 16th day of October, 2006.

BY THE COURT:

s/ Joseph F. Bataillon _____
JOSEPH F. BATAILLON
United States District Judge